

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 120

May 18, 1999, 9:50 a.m.
Page S-5442 Temp. Record

Y2K LAWSUIT ABUSE PROTECTIONS/Cloture, motion to proceed (2nd vote)

SUBJECT: Y2K Act . . . S. 96. Lott motion to close debate on the motion to proceed.

ACTION: CLOTURE MOTION REJECTED, 53-45

SYNOPSIS: As reported, S. 96, the Y2K Act, will enact numerous reforms to protect companies from abusive litigation related to year 2000 (Y2K) computer date change problems. Without passage of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems.

On May 14, 1999, Senator Lott sent to the desk, for himself and others, a motion to close debate on the motion to proceed to the bill.

NOTE: A three-fifths majority (60) vote is required to close debate. Generally, those favoring the motion to invoke cloture favored the amendment; those opposing the motion to invoke cloture opposed the amendment.

The Senate had previously considered the bill and then returned it to the calendar due to a continuing filibuster by Democratic Senators (see vote No. 95).

Pending to the bill is a McCain/Wyden substitute amendment that would enact numerous compromise changes. (The description below is of the amendment as it was offered. After the amendment was offered, negotiations continued with concerned parties and other agreements were reached that are not reflected in the description.) Provisions of the amendment include the following: it would apply only to Y2K actions brought in State or Federal courts after February 22, 1999, and before January 1, 2003; it would not apply to any claim for personal injury or wrongful death, nor would it supersede any valid, enforceable written contract between a plaintiff and a defendant; no new cause of action would be created; State law would be superseded to the extent that it established a rule of law applicable to a Y2K action that was inconsistent with State law; clear and convincing evidence would be required for the award of punitive damages; for individuals with net worths of not more than \$500,000, and for businesses that had fewer than 25 full-time employees, punitive damages would be limited to the lesser of 3 times the actual damages awarded or \$250,000, and for all other

(See other side)

YEAS (53)		NAYS (45)		NOT VOTING (2)	
Republicans (53 or 98%)	Democrats (0 or 0%)	Republicans (1 or 2%)	Democrats (44 or 100%)	Republicans (1)	Democrats (1)
Abraham	Hutchinson	Shelby	Akaka	Brownback- ²	Moynihan- ^{2AN}
Allard	Hutchison		Baucus		
Ashcroft	Inhofe		Bayh		
Bennett	Jeffords		Biden		
Bond	Kyl		Bingaman		
Bunning	Lott		Boxer		
Burns	Lugar		Breaux		
Campbell	Mack		Bryan		
Chafee	McCain		Byrd		
Cochran	McConnell		Cleland		
Collins	Murkowski		Conrad		
Coverdell	Nickles		Daschle		
Craig	Roberts		Dodd		
Crapo	Roth		Dorgan		
DeWine	Santorum		Durbin		
Domenici	Sessions		Edwards		
Enzi	Smith, Bob		Feingold		
Fitzgerald	Smith, Gordon		Feinstein		
Frist	Snowe		Graham		
Gorton	Specter		Harkin		
Gramm	Stevens		Hollings		
Grams	Thomas		Inouye		
Grassley	Thompson				
Gregg	Thurmond				
Hagel	Voinovich				
Hatch	Warner				
Helms					

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

plaintiffs punitive damages would be limited to the greater of 3 times the actual damages awarded or \$250,000; punitive damage caps would not apply if there was clear and convincing evidence of specific intent to injure; punitive damages would not be awarded against government entities; injunctive relief could be sought immediately, but other actions would require prior notice and then a waiting period (if the defendant responded to the notice) during which time the defendant could attempt to resolve the problem (this waiting period would not supersede or otherwise preempt any State law or procedure with respect to the use of alternative dispute resolution for Y2K actions; the total notice and waiting period would be a maximum of 90 days); pleading standards would be enacted; unless a defendant acted with specific intent to injure or knowingly committed fraud, liability in a Y2K action would be several but not joint (each defendant would pay only the proportion of damages for which it was responsible); special rules would restore joint and several liability in certain circumstances if one of the defendants was insolvent; and a class action suit would be maintained only if the court found that the alleged defect was material to the majority of the members of the class and the suit satisfied all other prerequisites established by applicable Federal or State laws or rules.

Other amendments and motions were pending to the bill at the time of the vote that filled available parliamentary openings for offering amendments.

Those favoring the motion to close debate contended:

The Y2K litigation problem is so large it threatens the continued viability of our computing industry and could impose a litigation tax of up to \$1 trillion, which would ultimately come out of the pocketbooks of American consumers. The problem is national in scope and demands a national response. The sooner we act, the less costs that businesses and consumers will have to endure. Only lawyers will lose. They will not be able to collect 30 percent, 40 percent, or more of the proceeds from \$1 trillion in lawsuits. Instead of letting matters drag on for years in litigation, we should enact a one-time fix to the problem so that businesses, and lawyers, will have incentives to resolve problems quickly with minimal costs for everyone. This bill will enact such a one-time fix. It is narrowly tailored to address only the Y2K problem, and numerous compromises have been agreed to in order to accommodate the concerns of some Democratic Senators.

We tried to pass this bill a couple of weeks ago, but it was killed by Democratic Senators who wanted to conduct a rolling filibuster by amendment. Now those same Senators say they do not want to go back to the Y2K bill to consider more of their amendments because they say they have an endless series of amendments that they want to offer to this bill. They will not agree to a finite list of amendments with time agreements on Juvenile Justice. In other words, they appear to want to stay on this bill without limit. They are playing political games with it, and now they are using their desire to play political games with the Juvenile Justice bill as an excuse for not going back to their filibuster on the Y2K bill. Is there any bill Democrats will not filibuster? One Democrat in this debate complained that the Senate spent several days last Congress on a bill to rename an airport after former President Reagan. That Senate is right--it took that long because Democrats engaged in a mean-spirited filibuster of that bill, which should have passed by unanimous consent with a couple of seconds of debate.

The bottom line of the Y2K bill for many Democrats is that is opposed by the American Trial Lawyers Association, which stands to make hundreds of billions of dollars from Y2K litigation. Businesses will be destroyed, thousands of jobs will be lost, and consumer costs will climb, but lawyers will get rich. We urge our Democratic colleagues to stop their filibuster. The Senate has a broad range of urgent bills it needs to complete. It cannot spend weeks debating everything. We urge our colleagues to drop their filibuster of the motion to proceed.

Those opposing the motion to close debate contended:

We think that the Senate is making progress on the Juvenile Justice bill and that it should continue the debate. It has only been on the bill for one week. In the wake of the violence at Columbine High School, the American people fully expect the Senate to give full consideration to the subject of juvenile crime. Many issues remain to be considered, and we are committed to staying on the bill until we have had ample opportunity to address those issues. We remind our colleagues that the Senate spent several days on a bill to rename an airport after former President Reagan--surely the issue of stopping school violence is of at least equal moment. Frankly, we think that some Members only want to go back to the Y2K bill because they do not like debating our gun control amendments. They oppose those amendments, but they know that the American people are on our side when it comes to gun control. Our colleagues want to change the subject, but we will not let them. We oppose the motion to invoke cloture.